

STATE OF SOUTH CAROLINA**(Caption of Case)****IN RE:**

Happy Rabbit, LP on Behalf of,

Windridge Townhomes, Complainant,

v.

Alpine Utilities, Inc., Respondent

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA****COVER SHEET****DOCKET****NUMBER: 2008 - 360 - S**

(Please type or print)

Submitted by: Richard L. Whitt**SC Bar Number:** 62895**Address:** Austin & Rogers, P.A.**Telephone:** 803-251-7442508 Hampton Street, Suite 300**Fax:** 803-252-3679Columbia, South Carolina 29201**Other:** 803-256-4000**Email:** rlwhitt@alrlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)☐ **Emergency Relief demanded in petition** ☐ **Request for item to be placed on Commission's Agenda expeditiously****Other:** Routine

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit of Publication	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certifica
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigat
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certification of Mailing	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discove
<input checked="" type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Return	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other:
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

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* ALSO MEMBER NORTH CAROLINA BAR

April 6, 2009

VIA ELECTRONIC FILING

The Honorable Charles L. A. Terreni
Chief Clerk and Administrator
The Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

Re: • Happy Rabbit, a South Carolina Limited Partnership on behalf of Windridge
 Townhomes, (hereinafter, "Happy Rabbit") v. Alpine Utilities, Inc.; Docket No.
 2008-360-S
 • **Motion to Amend Complaint**

Dear Mr. Terreni:

Enclosed are Happy Rabbit's Motion to Amend Complaint, Certificate of Service,
Amended Complaint, Verification, and Coversheet.

Because the Respondent in this case has already filed an Answer, Happy Rabbit needs
leave of the Public Service Commission of South Carolina to Amend its Complaint. Counsel for
Happy Rabbit did not consult with counsel for Alpine to request their agreement for this
Amendment because such request would have been pointless.

Respectfully submitted,

_____/s/_____
Richard L. Whitt
Jefferson D. Griffith, III

Counsel of Record for
Happy Rabbit, a South Carolina
Limited Partnership on behalf of Windridge
Townhomes

RLW/jjy
cc: Certificate of Service

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2008-360-S

IN RE:)
Happy Rabbit, LP on Behalf of,)
Windridge Townhomes,)
)
Complainant,)
v.)
)
Alpine Utilities, Inc.,)
Respondent.)
_____)

**COMPLAINANT'S
MOTION TO AMEND
COMPLAINT**

INTRODUCTION

Happy Rabbit, a South Carolina Limited Partnership, on behalf of Windridge Townhomes, (hereinafter, "Happy Rabbit") filed a Complaint in this Docket on September 16, 2008. Thereafter, extensive discovery has been completed by the parties. As a result of discovery, served by Complainant Happy Rabbit, and answers thereto by Alpine Utilities, Inc., (hereinafter, "Alpine"), Alpine has admitted that actual notice of Section 27-33-50, S.C Code of Laws Ann. (1976, as amended), was provided to Alpine by Happy Rabbit, on or about October 6, 2003. Alpine thereafter willfully overcharged Happy Rabbit, despite being placed on notice of Section 27-33-50, and despite Happy Rabbit's request that Alpine establish sewer utility accounts with each tenant of Happy Rabbit, as required by Section 27-33-50. Happy Rabbit filed a Motion to Conform to Proof on March 11, 2009. Alpine filed a Response to Happy Rabbit's Motion on March 20, 2009. Happy Rabbit filed a Reply to Alpine's Response to Happy Rabbit's Motion to Conform to Proof on April 6, 2009. Happy Rabbit's Motion to Amend Complaint, pursuant to Rule 15(a) of the S.C. Rules of Civil Procedure follows:

MOTION TO AMEND COMPLAINT

Complainant's Motion to Conform to Proof is still pending with the Public Service Commission of South Carolina, (hereinafter, "Commission"). Happy Rabbit believes that its Motion is meritorious and should be granted by this Commission. However, in light of Respondent's objection and in an abundance of caution, Happy Rabbit hereby moves to amend its Complaint. If this Commission grants Happy Rabbit's Motion to Conform to Proof, then this Motion will be withdrawn. Rule 15(a) of the South Carolina Rules of Civil Procedure allows

amendments to Pleadings and such amendments are within the sound discretion of this Commission. Kelly v. S.C. Farm Bureau Mut. Ins. Co., 316 S.C. 319, 323, 450 S.E.2d 59, 61 (Ct. App. 1994). Also, because leave may be freely given when justice requires, a Court's decision allowing amendment will rarely be disturbed on appeal. City of North Myrtle Beach v. Lewis-Davis, 360 S.C. 225, 232-33, 599 S.E.2d 462, 465 (Ct. App. 2004). Furthermore, amendment should be freely given by leave of court, when justice requires and the amendment does not prejudice other parties. Griffith v. Griffith, 332 S.C. 630, 506 S.E.2d 526, 529 (Ct. App. 1998). Rule 15(a), strongly favors amendments and the Court is encouraged to freely grant leave to amend. Jarrell v. Seaboard Systems R.R., Inc., 294 S.C. 183, 186, 363 S.E.2d 398, 399 (Ct. App. 1987). The test for such amendment is prejudice to the other party, even if objected to by the other party. The prejudice envisioned by Rule 15(a) is simply a lack of notice that the new issue is to be tried and a lack of opportunity to refute it. Stanley v. Kirkpatrick, 357 S.C. 169, 174, 592 S.E.2d 296, 298 (2003). In the instant case, there is no prejudice because there is no lack of notice and there is no lack of opportunity to refute the amendment, because no hearing has been scheduled in this Docket.

CONCLUSION

Based on the foregoing and the Pleadings in this case, Happy Rabbit should be granted leave from the Court to amend its Complaint. The Amended Complaint and Verification are attached hereto as Exhibit "A".

Respectfully submitted,

_____/s/_____
Richard L. Whitt
Jefferson D. Griffith, III

Counsel of Record for
Happy Rabbit, a South Carolina
Limited Partnership on behalf of
Windridge Townhomes

Columbia, South Carolina

RLW/jjy
Enclosure

**WINDRIDGE TOWNHOMES
3300 Block of Kay Street
Columbia, South Carolina 29210
803-608-1517**

April 6, 2009

The Honorable Charles L.A. Terreni
Chief Clerk/ Administrator
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

RE: • **Amended Complaint of Sewer Services for Windridge Townhomes provided by
Alpine Utilities, Inc.**
• **Docket No. 2008-360-S**

Dear Mr. Terreni,

I am a General Partner of Happy Rabbit, a South Carolina Limited Partnership, which is the owner and operator of Windridge Townhomes (hereinafter, "Happy Rabbit"), as described above. Windridge receives sewer services from Alpine Utilities, Inc. (hereinafter, "Alpine"). In my opinion, Alpine has improperly established and maintained its utility relationship with Windridge and Happy Rabbit, in the following particulars: Violations of R. 103-533 (3), § 27-33-50, § 58-5-10, § 58-3-140, § 58-5-210, § 58-5-290, and § 58-5-300 and other applicable laws and regulations as may be revealed. Happy Rabbit is now aware that Alpine's admissions support a willful overcharge allegation for the period from December 29, 2005 until today.

Accordingly, I, on behalf of Happy Rabbit, ask that my original Complaint be amended, and I, on behalf of Happy Rabbit, request a formal hearing before the Public Service Commission of South Carolina, so that Happy Rabbit's concerns may be addressed by this Commission.

I have established an Escrow Account, in which Windridge's monthly sewer charges are placed by Happy Rabbit, pending the outcome of this matter.

Sincerely,



Happy Rabbit, A South Carolina Limited Partnership
On Behalf of Windridge Townhomes
By: James C. Cook

cc: Attorney Benjamin P. Mustian
Nanette S. Edwards, Esquire
South Carolina Office of Regulatory Staff

ORIGINAL

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2008-360-S

IN RE:

Happy Rabbit, LP on Behalf of,
Windridge Townhomes,

Complainant,

v.

Alpine Utilities, Inc.,

Respondent

VERIFICATION

James C. Cook, being duly sworn states as follows:

1. My name is James C. Cook and I am a general partner of Happy Rabbit a South Carolina limited partnership (hereinafter, "Happy Rabbit").
2. Happy Rabbit is the owner and operator of the Windridge Townhomes.
3. Happy Rabbit, LP on Behalf of, Windridge Townhomes is the Complainant in the above-referenced matter.
4. I am familiar with the facts of this case, and the amendment of my Complaint against Alpine Utilities, Inc.
5. All facts alleged in the amendment and this matter are true and within my personal knowledge.

Further Deponent Saith Not:

SWORN to and SUBSCRIBED before me

Jennifer Stevenson
Notary Public for South Carolina

On this 6th Day of April, 2009

My Commission Expires: October 29th, 2017

James C. Cook
James C. Cook

ORIGINAL

**BEFORE
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DOCKET NO. 2008-360-S**

IN RE:

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Respondent

CERTIFICATE OF SERVICE

I, Jessica Yun, an employee of Austin & Rogers, P.A., certify that I mailed a copy of Happy Rabbit's Motion to Amend Complaint, Amended Complaint, Verification, and correspondence in the above referenced matter as indicated below, via U.S. Mails as addressed below, with proper postage affixed thereto, or e-mail on April 6, 2009.

Attorney Benjamin P. Mustian
P.O. Box 8416
Columbia S.C., 29202-8416
Via U.S. Mail

Nanette S. Edwards, Esquire
Via e-mail

Austin & Rogers, P.A.

/S/
Jessica Yun

Columbia, South Carolina
April 6, 2009